

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0112
Sales and Withholding Tax
Responsible Officer
For the Tax Period April, 1999 – November, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Sales Tax and Withholding Taxes-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8(f), IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, withholding taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said trust taxes during the tax period April, 1999 through November, 1999. The taxpayer protested the assessment and a hearing was held.

1. Sales and Withholding Taxes-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The taxpayer provided significant documentation evidencing that he left his position with the corporation in November, 1998. Since the taxpayer was not an employee, officer, or member of the corporation from April, 1999 through November, 1999, the taxpayer cannot be held personally responsible for trust taxes that the corporation did not remit to the state.

Finding

The taxpayer’s protest is sustained.

KMA/JMM/MR--041305